Pastelle Company, Inc., d/b/a St. Regis Hotel *and* Local 24, Hotel Employees and Restaurant Employees International Union, AFL–CIO. Case 7–CA–45206

May 30, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH AND ACOSTA

The General Counsel seeks a default judgment[1] in this case on the ground that the Respondent has failed to file an answer to the complaint. Based on a charge and amended charges filed by the Union on June 13, July 1, August 29, and September 30, 2002, the General Counsel issued the complaint on September 30, 2002, against Pastelle Company, Inc., d/b/a St. Regis Hotel, the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the Act. The Respondent failed to file an answer.

On December 11, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On December 12, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated October 17, 2002, notified the Respondent that unless an answer were received by October 31, 2002, a Motion for Default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for default Judgment.[2]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, has maintained a facility in Detroit, Michigan (the Respondent's Detroit facility). The Respondent has been engaged in the operation of a hotel.

During the calendar year ending December 31, 2001, the Respondent, in conducting its business operations, derived gross revenues in excess of $500,000 and received at its Detroit facility products valued in excess of $50,000, which were shipped directly from points located outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 24, Hotel Employees and Restaurant Employees International Union, AFL–CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth below opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

David Steele	President
Tom Wilkerson	Controller
Joyce Martin	Dining Room Manager

The employees set forth in appendix A through F of the collective-bargaining agreement described below (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Since at least the 1970's and at all material times, the Union has been the exclusive collective-bargaining representative of the unit and has been so recognized by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from January 1, 2001, to December 31, 2002.

[1] The General Counsel's motion requests summary judgment on the ground that the Respondent has failed to file an answer to the complaint. Accordingly, we construe the General Counsel's motion as a Motion for Default Judgment.

[2] The General Counsel's motion indicates that the Respondent has filed a petition for bankruptcy. It is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. See, e.g., *Cardinal Services*, 295 NLRB 933 fn. 2 (1989), and cases cited there. Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See id. *NLRB v. 15th Avenue Iron Works, Inc.*, 964 F.2d 1336, 1337 (2d Cir. 1992). Accord: *Aherns Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir. 1983).

At all times since the 1970s, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About January 2002, the Respondent, by its agent, David Steele, at the Respondent's Detroit facility, threatened employees with discharge if they filed grievances.

On about July 5, 2002, the Respondent discharged John Porteus, its employee. The Respondent engaged in this conduct because of its employees' union activities and to prevent other employees from engaging in these and other concerted activities.

Since about late December 2001, and continuing to date, the Respondent repudiated the following provisions of the collective-bargaining agreement:

(a) In about late December 2001, the provisions relating to paying moneys to the Hotel Employees and Restaurant Employees International Union Pension Fund and the Hotel and Restaurant Employees International Union Welfare Plan.

(b) In about January 2002, the provisions relating to paying for employee and dependent medical insurance.

(c) In about April 2002, the provisions relating to gratuities paid to banquet employees when no banquet captain works, gratuities for serving additional customers, and bar gratuities.

These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purpose of collective bargaining.

On about May 29 and 30, and June 3, 2002, the Union requested that the Respondent furnish it with information relating to whether the Respondent was complying with the collective-bargaining agreement and other matters important to the Union as the exclusive collective-bargaining representative of the unit. In addition, on about July 9, 2002, the Union requested that the Respondent furnish it with information relating to the discharge of unit employee John Porteus. The information requested by the Union is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

The Respondent has failed and refused to furnish the Union with the information it requested.

CONCLUSION OF LAW

By threatening employees with discharge if they filed grievances, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act. In addition, by discharging employee John Porteus because of its employees' union activities, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act. Finally, by repudiating certain provisions of the collective-bargaining agreement and refusing to provide the Union, on request, with necessary and relevant information regarding the discharge of Porteus and Respondent's compliance with the agreement, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive bargaining representative of its unit employees in violation of Section 8(a)(5) and (1) of the Act.[3] The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) of the Act by discharging John Porteus, we shall order the Respondent to offer him full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful discharge of John Porteus, and to notify him in writing that this has been done.

[3] As indicated above, the complaint alleges that the Union also requested information relating to "other matters important to the Union." However, neither the complaint nor the motion describe what those "other matters" were, and the Union's written information requests are not included as exhibits to the motion. In these circumstances, we decline to find that Respondent violated the Act by refusing to provide that information, and we will not order the Respondent to provide it. See *Spencer Group Inc.*, 338 NLRB No. 44 (2002) (not reported in Board volumes) (limiting order in default judgment proceeding to requested information specifically identified in the complaint). Thus, to the extent the General Counsel's motion seeks a default judgment and order with respect to information regarding such "other matters," the motion is denied and the matter is remanded to the Regional Director for further appropriate action.

Member Walsh disagrees. By failing to file any answer to the complaint, the Respondent has admitted all of its allegations, including the allegations that all the information requested in the Union's letters of May 29 and June 3, 2002, was relevant and necessary to the Union's collective-bargaining responsibilities, and the Respondent violated Sec. 8(a)(5) by failing and refusing to provide all that information. Accordingly, Member Walsh would grant the General Counsel's motion in all respects, and Member Walsh would order the Respondent to provide all the requested information.

Further, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by repudiating provisions of the parties' January 1, 2001, through December 31, 2002 collective-bargaining agreement relating to the Pension Fund and Welfare Plan, medical insurance, and gratuities, we shall order the Respondent to honor the terms and conditions of that agreement, until a new agreement or good-faith impasse in negotiations is reached, and to make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful conduct. In addition, we shall order the Respondent to restore the employees' medical insurance coverage and make all required payments or contributions to the Pension Fund and Welfare Plan that have not been made since late December 2001, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).[4] In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required Medical insurance and benefit-fund payments or contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to unit employees shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, having found that the Respondent has also violated Section 8(a)(5) and (1) by failing to provide necessary and relevant information requested by the Union on May 29 and 30, June 3, and July 9, 2002, relating to the discharge of Porteus and Respondent's compliance with the agreement, we shall order the Respondent to provide that information to the Union.

ORDER

The National Labor Relations Board orders that the Respondent, Pastelle Company, Inc., d/b/a St. Regis Hotel, Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discharge if they file grievances.

(b) Discharging or otherwise discriminating against any employee for supporting the Union or any other labor organization.

(c) Repudiating the provisions of the collective-bargaining agreement relating to the Pension Fund and Welfare Plan, medical insurance, and gratuities. The appropriate unit is the employees set forth in appendix A through F of the agreement.

(d) Failing and refusing to furnish the Union with information that is relevant and necessary to the performance of its duties as the exclusive bargaining representative of the unit employees.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer John Porteus full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make John Porteus whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful discharge of John Porteus, and within 3 days thereafter notify him in writing that this has been done, and that the discharge will not be used against him in any way.

(d) Honor the terms and conditions of the January 1, 2001, through December 31, 2002 collective-bargaining agreement with the Union, until a new agreement or good-faith impasse in negotiations is reached, and make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of its repudiation of the provisions of the agreement relating to the Pension Fund and Welfare Plan, medical insurance, and gratuities since late December 2001.

(e) Restore the employees' medical insurance coverage and make all required payments or contributions that have not been made to the Pension Fund and Welfare Plan since late December 2001, and reimburse the unit employees for any expenses resulting from its failure to make the required payments or contributions, in the manner set forth in the remedy section of this decision.

(f) Furnish the Union with the information it requested on May 29 and 30, June 3, and July 9, 2002, relating to the discharge of Porteus and Respondent's compliance with the collective-bargaining agreement.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, so-

[4] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

cial security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since late December 2001.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten employees with discharge if they file grievances.

WE WILL NOT discharge or otherwise discriminate against any employee for supporting the Union or any other labor organization.

WE WILL NOT repudiate the provisions of our collective-bargaining agreement with Local 24, Hotel Employees and Restaurant Employees International Union, AFL–CIO, relating to the Pension Fund and Welfare Plan, medical insurance, and gratuities. The appropriate unit is the employees set forth in appendix A through F of the agreement.

WE WILL NOT fail and refuse to furnish the Union with information that is relevant and necessary to the performance of its duties as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days of the Board's Order, offer John Porteus full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to seniority or any other rights or privileges previously enjoyed.

WE WILL make John Porteus whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest.

WE WILL, within 14 days of the Board's Order, remove from our files any and all references to the unlawful discharge of John Porteus, and WE WILL, within 3 days thereafter notify him in writing that this has been done, and that the discharge will not be used against him in any way.

WE WILL honor the terms and conditions of our January 1, 2001, through December 31, 2002 collective-bargaining agreement with the Union, until a new agreement or good-faith impasse in negotiations is reached, and WE WILL make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of our repudiation of the provisions of the agreement relating to the Pension Fund and Welfare Plan, medical insurance, and gratuities since late December 2001.

WE WILL restore the employees' medical insurance coverage and make all required payments or contributions to the Pension Fund and Welfare Plan that have not been made since late December 2001, and WE WILL reimburse the unit employees for any expenses resulting from our failure to make the required payments or contributions, with interest.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL furnish the Union with the information it requested on May 29 and 30, June 3, and July 9, 2002, relating to the discharge of Porteus and our compliance with the collective-bargaining agreement.

PASTELLE COMPANY, INC., D/B/A ST. REGIS HOTEL